

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARIA MUNOZ,
PRISCILLA SWIFT,

Plaintiffs,

v.

COASTAL CAPITAL PROCESSING LLC,
d/b/a Bournview Recovery Group,

Defendant.

**DECISION
and
ORDER**

19-CV-1312S(F)

APPEARANCES:

HILTON PARKER LLC
Attorneys for Plaintiffs
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In this action, pursuant to the Fair Debt Collection Act, Plaintiffs, by papers filed September 29, 2020 (Dkt. 20) moved to compel discovery ("Plaintiffs' motion"). Specifically, Defendant failed to respond to Plaintiffs' document production requests and interrogatories served on June 2, 2020 (Dkt. 20-1 at 2-4), (Dkt. 20-1 at 5-6), (Dkt. 20-1 at 7-8). According to the court's Text Order, Dkt. 21, Defendant's response to Plaintiffs' motion was due October 9, 2020; Plaintiffs' reply was to be filed October 15, 2020, with oral argument calendared for October 22, 2020. To date, Defendant has failed to respond to Plaintiffs' motion and there is no indication Defendant has provided the requested discovery now approximately overdue by 120 days. The oral argument scheduled for October 22, 2020 was therefore cancelled.

Any potential objections Defendant may have had to Plaintiffs' document requests or other discovery are therefore waived because it is well-established that a party's failure to timely respond to a request for discovery waives any potential objection to a request. See *Kloppel v. HomeDeliveryLink, Inc.*, 2020 WL 38895, at *5 (W.D.N.Y. Jan. 3, 2020) (citing *Swinton v. Livingston County*, 2016 WL 6248675 at *2 (W.D.N.Y. Oct. 26, 2016) (citing *Land Ocean Logistics, Inc. v. Aqua Gulf Corp.*, 181 F.R.D. 229, 237 (W.D.N.Y. 1998))). Further, Defendant's unexcused failure to respond to Plaintiffs' motion permits the court to deem the merits of the motion to be conceded. See *A/ston v. Bellerose*, 2016 WL 554770, at *6 (D.Conn. Feb. 11, 2016) (noting defendants, by failing to respond in opposition to plaintiff's motion to compel discovery, provided no authority supporting any objection to discovery). Plaintiffs' motion indicates Plaintiffs reminded Defendant of its unsatisfied discovery obligation prior to filing Plaintiffs' motion in compliance with Fed.R.Civ.P. 37(a). As noted, despite the court's direction, Defendant failed to respond timely to Plaintiffs' motion thus demonstrating Defendant's continued indifference and unexplained disregard of its obligation to respond to Plaintiffs' discovery requests.

Unless a party's failure to provide discovery is substantially justified or an award of expenses to the prevailing party would be unjust, the court is required to award the prevailing party its expenses, including its reasonable attorney fees, incurred in bringing a motion to compel in accordance with Fed.R.Civ.P. 37(a)(5)(A) ("Rule 37(a)(5)(A)"). Here, Plaintiffs' discovery requests have remained overdue since July 2, 2020 without excuse or any proffered justification by Defendant. Accordingly, Plaintiffs' motion should be GRANTED.

CONCLUSION

Based on the foregoing, Plaintiffs' motion (Dkt 20) is GRANTED. Defendant shall produce the documents requested by Plaintiffs within 20 days of this Decision and Order. In accordance with Rule 37(a)(5)(A), Defendant shall show cause not later than October 30, 2020 why Plaintiffs' expenses in connection with Plaintiffs' motion should not be awarded to be paid by Defendant for resisting Plaintiffs' discovery request or Defendant's attorney who may have advised Defendant to engage in such conduct, or both.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dates: October 20, 2020
Buffalo, New York